

**Statement of James L. Connaughton, Chairman, Council on  
Environmental Quality**

**House Committee on Resources  
Task Force on Improving the National Environmental Policy  
Act**

**November 17, 2005**

Madame Chairman and distinguished Members, I am pleased to be here today to discuss the implementation of the National Environmental Policy Act (NEPA), and the lessons we have learned over the past 35 years. I appreciate the Task Force's efforts to take a hard look at NEPA, and I welcome the opportunity to review the Task Force's findings and recommendations as a result of this process.

Today I want to reflect on the basic principles of NEPA, describe several steps we are taking today to improve NEPA practice, and share some thoughts on NEPA's future and our goals at CEQ.

**Basic Principles**

As the first modern environmental statute, NEPA is remarkable for its simplicity. It does not set forth overly detailed procedural requirements or regulations, but instead provides the foundation for a process intended to deliver better performance. NEPA is a landmark statute that is as relevant today as when Congress passed it in 1969. At its core, Section 101 of NEPA lays out a clear bipartisan vision of sustainable development:

*“(...) it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and*

*measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” [42 USC 4331]*

President Bush is committed to making consideration of the environment an integral part of how we conduct the people's business. He continues to challenge us to find new ways to improve our cooperative efforts to achieve our goals of enhanced quality of life, environmental quality, and stewardship.

In my capacity as Chairman of the President's Council on Environmental Quality, one of my main responsibilities is to oversee implementation of NEPA. By focusing on modernizing agency NEPA implementation, the President's goal is to ensure that federal decision-making is more effective, efficient and timely and that the goals and objectives of NEPA are better aligned with that decision-making.

At CEQ, we have translated the President's charge into five goals by which we can measure our success in modernizing NEPA implementation:

1. Stewardship: We must empower ground level resource managers to be responsible and accountable for our nation's natural, cultural and historic resources. NEPA processes should empower local federal employees and their tribal, state and local counterparts to identify and address all environmental aspects, and provide for the future management of those resources. The NEPA process must provide opportunities for public involvement early in the process and throughout.

2. Science based decision-making: NEPA analyses and documents must continue to provide a solid scientific basis for managing environmental risks. Modern technology can reduce duplicative efforts, by enabling agencies to use existing datasets and analyses as a basis for future efforts.
3. Public involvement: Local involvement is the key. We emphasize efforts to engage state, tribal and local agencies as cooperating agencies to extend and expand public involvement.

Cooperating Agency status is the most formal way to provide opportunities for tribal, state and local involvement. CEQ has required as a matter of policy that federal agencies offer tribal, state and local government formal cooperating agency status. I would like to attach to my testimony a copy of CEQ's Memorandum to the Heads of All Federal Agencies on Cooperating Agencies in Implementing the Procedural Provisions of NEPA (January 30, 2002).

In addition, we have increased our training for tribal, state and local government officials that have an interest in formal cooperating agency status. Our efforts have had the effect of increasing the intergovernmental dialogue with tribal, state and local governments. Indeed, even agencies that would rather not assume the responsibility for a formal role have taken the opportunity to enhance effective and timely participation.

4. Innovation: Market forces, incentives and research and development are three ways to refocus our thinking about how future actions can protect our resources. NEPA analyses should include innovative mitigation and protection measures that can take evolving technologies and practices into account.
5. Compliance: NEPA's goal to enhance and protect the human environment includes the need to comply with environmental

laws, regulations, and directives. As directed in CEQ's implementing regulations for NEPA, we must, to the fullest extent possible, integrate compliance with all environmental requirements into a single set of directives and then translate that into our resource management operations and activities.

NEPA has been the subject of a comprehensive review in this and almost every prior administration. One fact stands clear, the challenges, hurdles, or barriers to effective NEPA implementation typically are not with the Act. In fact, it is how NEPA regulations are implemented that most needs improving and modernization.

The efficiency and effectiveness of NEPA implementation has been and is the focus of numerous practical steps CEQ has undertaken to modernize NEPA practice. We are now implementing recommendations made by the CEQ NEPA Task Force in its 2003 report to CEQ, *Modernizing NEPA Implementation*. Let me highlight several consequential examples.

### **Public Involvement**

The NEPA process brings together interested parties with various perspectives and views. NEPA provides all interested parties a voice and a role in framing our decisions. This aspect of NEPA has proven successful in avoiding, resolving, or at least lowering the temperature of the conflicts that can complicate environmental and natural resource management and policy.

CEQ regulations call for public involvement in all NEPA analyses, and we continue to encourage agencies to be proactive in engaging the public in NEPA activities at all levels. Early involvement by a better informed public narrows potential conflicts -- we know this from 35 years of practice and experience.

## *Conflict Resolution*

To further minimize potential conflicts, we must also ensure that interested parties participate in the ongoing dialogue and are closely associated with our decisions. In doing so, we ensure that interested parties have a sense of ownership of the outcome, even if the outcome is not exactly as they want.

While litigation is one subset of the ways conflicts can be addressed, it can be costly and time consuming, and is not the only way in which conflicts can be resolved. CEQ is working with the Institute for Environmental Conflict Resolution at the Morris K. Udall Foundation to systematically increase the internal capacity of federal agencies to use alternative dispute resolution techniques early in the process, bringing parties together to seek common ground and accept compromise. We have referred specific matters to the Institute for assessment and mediation, and I would commend the Institute's work to this Committee.

We are now in the process of implementing changes designed to improve and focus the NEPA process. I especially want to highlight today the work of the CEQ NEPA Task Force, and thank them for more than three years of efforts on this important topic. The task force included seasoned, experienced agency NEPA practitioners who sought input and advice from every sector.

Their report, *Modernizing NEPA Implementation*, was issued in September 2003. Subsequently, public roundtables were held around the country to review the report and its more than 50 recommendations. I ask that the full report, public comment records, and reports from the public roundtables be entered into the hearing record along with my testimony.

### *Cumulative Effects*

Recently, there has been concern at the ground level over the increasing scope of cumulative effects analysis being required by the courts. In response, CEQ recently issued guidance on consideration of past actions in agencies' cumulative effects analysis. That guidance re-emphasized our focus on using relevant, useful, available information about the potential effects of proposed actions. Judge Shea in the Federal District Court for the Eastern District of Washington recently cited CEQ's guidance in upholding the adequacy of an environmental assessment prepared by the Forest Service for salvage sales in the *Conservation Northwest v. Forest Service* (Case 2:05-cv-002200-EFS, filed 08/26/2005).

### *Energy Projects*

On May 18, 2001, pursuant to a recommendation contained in the Administration's *National Energy Policy*, the President signed Executive Order 13212, establishing an interagency Task Force on Energy Project Streamlining ("Energy Project Task Force") to monitor and assist federal agencies in their efforts to expedite their review of permits and actions. The Task Force sought to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy. Operating under direction from CEQ, the Energy Project Task Force originally focused on both specific proposed projects and broader management issues. The Energy Project Task Force is still active today with responsibility for specific proposed projects now lying with the lead agencies, and CEQ focused on providing guidance and developing processes to address the effective, efficient and timely preparation of NEPA analyses and documents for energy-related projects.

Liquefied natural gas (LNG) terminals and pipeline infrastructure are two areas where, as a result of the work of the Energy Project Task Force, we have taken great strides in developing a timely, collaborative NEPA framework. We developed Memoranda of Understanding (MOU) that call for early coordination among all federal agencies with a role in making and implementing the proposed actions involving pipelines and LNG ports and terminals. This process calls for developing and adhering to timelines as well as providing opportunities for tribal, state and local involvement.

### **Healthy Forests**

In carrying out the President's Healthy Forest Initiative, a large part of the administrative response to the threat of increased devastation from wildfires involved categorical exclusions and environmental assessments. Categorical exclusion is a term that I find implies an exemption or exclusion from NEPA. In fact, a categorical exclusion is based on the administrative record that demonstrates through reasoned analysis and consideration of past activities that certain classes of actions typically do not individually or cumulatively have significant effects on the human environment.

This application of NEPA requires that the analysis be done up front to identify those forest hazardous fuel reduction activities that merit exclusion from further analysis in an environmental assessment or environmental impact. Of course, under CEQ's NEPA regulations, agencies must allow for "extraordinary circumstances in which a normally excluded action may have a significant environmental effect" when applying a categorical exclusion to a specific proposal. Use of categorical exclusions allows agencies to focus on activities that do have the potential for significant environmental impacts.

Similarly, CEQ provided guidance grounded in our regulations that called for focused, concise and timely environmental assessments. Although 15 environmental assessments were originally prepared for the first hazardous fuels reduction forest thinning projects that involved timber harvests, only two were administratively challenged, unsuccessfully, and none were litigated.

### **Information Technology**

Another set of recommendations is focused on improving our use of information technology. My alma mater, Northwestern University, houses the most complete library of Environmental Impact Statements (EIS) in the country. We are working with partners to develop a proposal to implement interagency GIS-enabled mapping of past and ongoing analyses to provide a rich database of existing information, facilitate timely access to information by decision makers and the public, and provide perspective on the number, extent and cumulative effects of proposed actions nationwide. It is now time to use today's technologies to make the wealth of information in NEPA documents more readily available.

The Task Force report also calls for guidance that empowers agencies to prepare concise, focused environmental assessments. Implementing these recommendations will help focus decision-makers on analyzing and documenting the types of proposed actions likely to have significant environmental impacts and merit documentation in an EIS.

### **Environmental Management Systems**

The Task Force also recommended increased use of environmental management systems as a tool to help meet our objectives under NEPA. An Environmental Management System (EMS) is a set of processes and practices that enable an organization (like a federal



agency) to reduce its environmental impacts and increase its operating efficiency. Building on EMS concepts, an agency can retool its entire NEPA program to include:

- Procedures to identify an agency or facility's environmental impacts and set objectives and targets for improved environmental performance;
- NEPA implementation and operation systems that set responsibilities, require training and awareness from everyone according to their responsibilities, and use NEPA for documentation and operational controls;
- Practical programs for checking and corrective actions, including monitoring and measuring performance towards continual improvement targets; and
- Management review requirement, not just for the signature on a decision document, but also to ensure that the NEPA program is suited and continually adapted to changing conditions and information

This process can help translate the general concepts of NEPA into day-to-day management and policy decisions that reflect our commitment to continual improvement, pollution prevention, compliance with relevant environmental laws, and additional requirements that an agency has voluntarily adopted.

We encourage federal agencies to look at EMS as their main tool to implement NEPA. Agencies must still apply the statutes and regulations because EMS requires agencies to assess all environmental aspects including compliance obligations. It therefore does not avoid elements of NEPA; it actually embraces and amplifies the philosophy of NEPA.

## *Conclusion*

It is a testament to the vitality of NEPA that the statute has not been changed in 35 years in any substantial measure. CEQ regulations themselves have stood the test of time. NEPA has however undergone comprehensive review in this and almost every prior administration. To put the Act in perspective, federal agencies prepare annually approximately 50,000 Environmental Assessments and 350 Environmental Impact Statements. Between 2001 and 2004, approximately 140 cases were filed annually involving a NEPA-based challenge, and approximately 13 injunctions were issued each year.

We take great pride at the federal level that 20 states have adopted a State-level environmental planning process that is similar to NEPA. Furthermore, many countries around the world have taken NEPA as a model for their own environmental review practices.

But we can and we must do better. We must renew our efforts to provide decision makers and the public with relevant and timely environmental analyses that add value to the way federal agencies go about their business. By returning to the core principles of NEPA practice as it was intended and learning from the past 35 years of implementation activities, we can modernize NEPA practices for the new millennium.

I am committed to working with you and all interested parties involved to continue a living NEPA process. Senator John Chafee, one of the greatest environmental statesmen of the Senate, described NEPA as a “tall order, but an important one.” I agree and look forward to the Committee’s report and recommendations.

Thank you very much.